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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,177	02/09/2001	James D. Hooberman	HCI-10002/38	8403

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EXAMINER	
SRIVASTAVA, VIVEK	
ART UNIT	**PAPER NUMBER**
2617	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/780,177	HOOBERMAN, JAMES D.	
	Examiner	Art Unit	
	Vivek Srivastava	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 8-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6 and 8-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The 1.131 declaration/affidavit filed on 6/24/05 under 37 CFR 1.131 has been considered but is ineffective to overcome the Treyz reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Treyz reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Evidence must by provided to establish conception of the invention prior to the effective date of the Treyz reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Treyz reference to either a constructive reduction to practice or an actual reduction to practice. Evidence must be provided to show diligence.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz (US 6,678,215) in view of Schulz (US 3,576,185).

Regarding claim 1, Treyz discloses a network-based program that produces sounds for the user (column 2, tines 36-53). Treyz does not disclose, however, the inclusion of sleep-inducing sounds as media available to the user.

In analogous art, Schulz teaches the use of tow frequency sounds to help induce sleep in the user (column 4, tines 24-27).

At the time of the invention, it would have been obvious to one of ordinary skilled in the art to generate sleep-inducing tones as taught by Schulz and present them to the user via the network-based program of Treyz. The motivation for doing so would have been to allow the user to conveniently use the same audio player used for other media playback to assist them in falling asleep. Also, allowing the steep-inducing sound creation device to be connected to the internet would allow the user to access the program on the computer when away from home without traveling with a separate steep-inducing appliance. Therefore, it would have been obvious to combine the net-based audio system of Treyz with the steep-inducing sound system of Schulz to produce a convenient, portable solution to insomnia.

Regarding claim 3, the combination of Treyz and Schutz teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses that the program is linked to a web site (column 5, tines 23-35).

Regarding claim 4, the combination of Treyz and Schutz teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses a sound controller, specifically play duration (column 5, tine 60 to column 6, tine 1).

Regarding claim 6, the combination of Treyz and Schulz teach all limitations of the claim as discussed for claim 1 above, wherein Treyz discloses an alarm clock routing (column 2, tines 54-64).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz and Schulz in view of information disclosed in the specification of the current application.

Regarding claim 2, the combination of Treyz and Schulz teach a network-based program that produces steep-inducing tones (as stated above) but do not teach those tones to be between 3 and 30 Hz. Instead, Schulz teaches tones from 40-80 Hz.

The disclosure states: "Oscillatory sounds in the frequency range given and preferably between 5 and 15 Hz are well known to induce relaxation and somnolence." See page 3 of specification. At the time of the invention, it would have been obvious to one of ordinary skilled in the art to use tones of 3-30 Hz produced through the network-based program of Treyz and Schulz to induce steep in the user. The combination of Treyz and Schulz teaches the use of 40-80 Hz signals to induce steep, but since signals of 5-15 Hz are "well known to induce relaxation", it would have been obvious to alter the

combination of Treyz and Schulz to produce the tower frequency tones in the range of 3-30 Hz with a goal of maximizing relaxation of the user.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz in view of Schulz and in further view of Adatia (US 2003/0112262).

Regarding claim 5, The combination of Treyz and Schulz teaches a network-based program which provides sleep inducing sounds to the user (see claim 1 rejection above). This combination does not teach, however, the ability of the program to provide a visual stream to the user that changes in concert with the produced sound.

In analogous art, Adatia teaches a net-based audio producing program (downloads file, audio, and visual information from the internet, paragraph 78) which comprises a visual stream that changes in concert with the sound. Paragraph 34 of Adatia teaches a "moving graphic that is preferably related to the music being played." At the time of the invention, it would have been obvious to one of ordinary skilled in the art to include sleep-inducing tones in the collection of media played through the system of Adatia. The motivation for doing this would have been to allow the user to schedule and listen to tow frequency tones help him or her fall asleep, all conveniently in the same interface which could also be used to awaken them in the morning and to play media throughout the day. In addition to the tones, it would be beneficial to the user to have calming visual effects to aid their relaxation. Therefore, it would have been obvious to include steep-inducing tones in the media available to the user through the management system of Adatia, and to present those tones to the user in a combined audio-visual display.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz in view of Nohara (US 5,699,323).

Regarding claim 8, Treyz discloses a network-based program (column 2, lines 36-53) which creates an auditory alarm signal at a user location in response to an input of an activation time (column 5, tines 62-67). All limitations of this claim are met by the system of Treyz.

Treyz fails to disclose the auditory alarm signal being a television broadcast.

In analogous art, Nohara discloses a system that turns on a television broadcast as the alarm clock to awaken a user. See column 1, lines 1 5-20.

At the time of the invention, it would have been obvious to one of ordinary skilled in the art to use the timer system of Nohara in conjunction with the net-based alarm clock program of Treyz. The motivation for doing so would have been to allow the user to awaken to audio and visual stimuli, instead of purely audible stimuli. This would not only allow the user to view their favorite television program upon awakening, but it would facilitate the awakening process. Therefore, it would have been obvious to use the net-based program of Treyz to control the electronic device activation system of Nohara in order to set an audible television broadcast to awake the user.

Regarding claim 9, the combination of Treyz and Nohara teach all of the limitations as discussed above, wherein Nohara teaches that the device may also be applied to pre-selected video devices, such as a VCR, instead of live television broadcasts (column 7, tines 18-20).

Regarding claim 10, the combination of Treyz and Nohara teach all of the limitations as discussed above, wherein Nohara teaches that the device may also be applied to activate a video source such as a VCR (column 7, lines 18-20).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272 – 7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs
9/17/05

VIVEK SRIVASTAVA
PRIMARY EXAMINER